

# Exhibit 25

Ueno, Thomas

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1 IN THE UNITED STATES DISTRICT COURT  
2  
3 FOR THE DISTRICT OF HAWAII

4 WAYNE BERRY, a Hawaii :  
citizen, :  
5 :  
6 Plaintiff, : CIVIL CV03-00385  
: NO.: SOM LEK  
7 vs. :  
8 :  
HAWAIIAN EXPRESS :  
9 SERVICE, INC., a :  
California corporation; :  
10 et al., :  
11 :  
Defendants. :

12 ----->

13  
14  
15 Deposition noticed by: Lex Smith, Esq.  
16  
17

VIDEOTAPED DEPOSITION OF THOMAS UENO

18  
19  
20 Taken on behalf of Defendant at the Law Offices of  
Kobayashi, Sugita & Goda, 999 Bishop Street, Suite  
21 2600, Honolulu, Hawaii, commencing at 9:00 a.m. on July  
22, 2005. .  
22  
23  
24

25 REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354

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A P P E A R A N C E S

For the Plaintiff:

TIMOTHY J. HOGAN, ESQ.  
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For the Defendant Post-Confirmation Trust:

LEX R. SMITH, ESQ.  
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and

ERIC C. LIEBELER, ESQ.  
Kirkland & Ellis LLP  
777 South Figueroa Street  
Los Angeles, California 90017  
(Appearing via telephone)

For the Defendants Mark Dillon, Teresa Noa and Brian  
Christensen, et al.:

LYLE S. HOSODA, ESQ.  
Lyle S. Hosoda & Associates  
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Honolulu, Hawaii 96813

ALSO PRESENT:

Rob Whitman, Videographer  
Certified Legal Video

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1 value established between a willing buyer and a willing  
2 seller, both who have been properly informed of all the  
3 necessary information to make the determination of  
4 value and who are neither under compulsion to buy or  
5 sell. That's what I believe fair market value is.

6 Q Okay. And what -- what's the difference between  
7 that and a reasonable license fee?

8 A Well, under -- what I'm looking at is is there a  
9 reasonable fee that one should pay for the use of this  
10 software. I'm not sure whether it was negotiated.  
11 See, I don't believe that we have negotiations taking  
12 place between a buyer and a seller.

13 Q You clearly do not. What I'm asking is how did  
14 you determine what the -- what are the criteria for  
15 determining what a reasonable license fee is?

16 A What I looked at is what I felt was being paid or  
17 given by Fleming for the use of this software.

18 Q Okay. I'm trying to understand what you mean --  
19 you said a reasonable license fee is the amount that  
20 one should pay. Can you explain what that -- in the  
21 work that you do as a professional CPA who does  
22 consulting and forensic work, what does that mean, the  
23 amount that one should pay?

24 A I don't know. You mean how do they pay it,  
25 whether they pay in cash or check? Is that what you're

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1 asking? I don't understand your question.

2 Q You've given an opinion of what a reasonable  
3 license fee is.

4 A That's correct.

5 Q Is there any treatise that discusses how one  
6 calculates a reasonable license fee?

7 A Well, we as -- myself as a CPA, we need to do our  
8 work in accordance with the consulting standards of the  
9 American Institute of CPAs and we do our calculations  
10 and all of our work in accordance with those standards.

11 Q You've testified that a reasonable license fee is  
12 different than fair market value.

13 A Well, I don't believe that in this particular  
14 situation, okay, that they were the same.

15 Q I'm not talking about this particular situation.

16 I'm talking as a matter of expert inquiry into  
17 financial matters that you're an expert on, what's the  
18 difference between fair market value and reasonable  
19 license fee?

20 A Well, if you're asking me are there occasions in  
21 which the reasonable license fee would be equal to the  
22 fair market value, and there would be occasions when  
23 they would be the same because it is negotiated and the  
24 fees, you know, between a willing buyer and willing  
25 seller they establish a fee and they both feel it's

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1 reasonable and that would be a reasonable license fee.

2 In this particular situation, as I explained, I  
3 don't think there was a negotiations taking place  
4 between a buyer and a seller. So that's why I think  
5 that in this case, okay, there may be -- it may not be  
6 the same.

7 Q But have you ever provided an opinion on the fair  
8 market value of something?

9 A Yes, I have.

10 Q And have you ever provided an opinion on fair  
11 market value in a situation where the asset was  
12 actually not sold?

13 A Yes.

14 Q Okay. And in those cases, there was no buyer and  
15 seller, correct?

16 A No, there was a willing buyer and a willing  
17 seller, okay. It's just that the transaction didn't go  
18 through.

19 Q Okay. Well, let's talk about situations where  
20 there wasn't a willing buyer and willing seller. Have  
21 you ever worked on a divorce?

22 A Yes, I have.

23 Q Have you ever provided an opinion about assets  
24 that weren't actually being sold, but on what their  
25 value was in a divorce?

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1 that.

2 Q I want to know what you determined here. At one  
3 point you said it's the amount that one should pay.  
4 And then later you seem like you are now saying that  
5 reasonable license fee is the equivalent of the amount  
6 that a willing buyer would pay a willing seller, both  
7 being fully informed and not under compulsion.

8 A No. I'm not trying to -- what I'm trying to do  
9 here is just to say what, you know, we did, okay, and I  
10 think what you're doing at this stage here, and I know  
11 it's in your interests to try to understand this, but I  
12 feel that you're trying to -- that we're not talking  
13 about the same thing any more. Okay. That that is  
14 what I said earlier is what a reasonable -- what I did,  
15 okay, and it's not going beyond that. All we did was a  
16 reasonable license fee that's a fee for the use of the  
17 software by Fleming, okay, with Mr. Berry. And that's  
18 all we did.

19 Q Okay.

20 A Okay. So that's why -- when you say fair market  
21 value, you know, I'm not sure -- that's why -- and we  
22 talked about the definitions and we have all these  
23 points about the definitions and how they apply. I'm  
24 not -- I'm just not comfortable when -- and then you're  
25 trying to expand the application of what I'm saying and

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1 I'm saying that's not what I did, okay. You're going

2 beyond what I did. Okay.

3 Q Okay. Okay. So in the work that you did, you

4 didn't attempt to determine what the fair market value

5 would be of a license to use their software?

6 A No, I didn't do a fair market value analysis even

7 as the way that you tried to explain it. That wasn't

8 what we were trying to do, okay. We just came up with

9 what I've characterized or I have termed as a

10 reasonable license fee.

11 Q Now, is the reasonable license fee that you have

12 opined on more or less than the fair market value of a

13 license to use the software, if you know?

14 A More or less? Well, being that I've not, you

15 know, determined what the -- I guess what you've

16 characterized as the fair market value, and I'm

17 assuming that what you're looking at is fair market

18 value if you put it on the marketplace and sell it to

19 anybody.

20 Q That's right.

21 A That's what I thought you were doing, okay. And

22 that's not the definition of fair market value, okay.

23 Just by the definition of it, it doesn't say that if we

24 just put it on the marketplace, this is what it is,

25 okay. It said between a willing buyer and a willing



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1 seller. So it gets very specific.

2 Q If you put it on the marketplace, aren't you  
3 assuming that the person who's going to buy it is a  
4 willing buyer?

5 A That's right. Well, but then if I have one buyer,  
6 I'm negotiating with one buyer, I can set up a  
7 reasonable license fee for that one buyer. Between he  
8 and I, we can discuss this, we can arrive at a fee and  
9 maybe the fee, the terms, and whatever else that makes  
10 up the value, right? Then I can turn to someone else  
11 and based on maybe different conditions or whatever,  
12 okay, I can negotiate with them a different fee for  
13 basically similar or maybe parts of it or whatever that  
14 he needs to use or wants to use, I may have a different  
15 fee, which is a reasonable fee.

16 It's the same where I provide services to someone,  
17 okay, sometimes, like for example we provide work or we  
18 do work in very complex things that's going to require  
19 a lot of analyses and a lot of special work and  
20 everything else, we may charge our full rates or we may  
21 charge a premium rate for what we do. Okay. And the  
22 person feels that he's getting a good value for what we  
23 do.

24 On other situations, maybe a little divorce or  
25 something like that, and -- or maybe a friend of the

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1 information, to assume that there is under no  
2 compulsion, then under that circumstances in this  
3 particular area, I would say yes, we have. Okay. And  
4 I think that's appropriate because now -- that's why  
5 I'm having this problem where I think what -- maybe not  
6 -- I'm sorry about, I'm just not clear, but I'm trying  
7 to be as clear as I can with you and I just want to  
8 tell you what we did. And I feel that sometimes you're  
9 asking me to tell you about what we didn't do. Okay.  
10 And you're trying to tell me -- to get me to something  
11 say something which I didn't do and that's why I'm  
12 trying to make it clear as to what we did. And I'm  
13 having this problem, okay, that we're trying to  
14 mischaracterize things and you are trying to use a  
15 specific term of art that may or may not apply. And so  
16 that's why I'm saying well -- that's what's putting me  
17 on my guard when you start doing that, okay.  
18 Q Did I understand your testimony correctly that in  
19 these circumstances and defining fair market value as  
20 being an opinion as to what a willing buyer and a  
21 willing seller would agree to, that your reasonable  
22 license fee is the same thing as fair market value?  
23 A Okay. As I answered to you under the conditions  
24 that you have used into how we define fair market  
25 value, the answer is yes.

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1 Q Okay. Let's take a break.

2 VIDEOGRAPHER: Time is 10:26 and we're going off  
3 the record.

4 (Brief recess.)

5 VIDEOGRAPHER: This is start of tape number two.  
6 Time is now 10:41 a.m. and we are back on the record.

7 BY MR. SMITH:

8 Q Mr. Ueno, in determining the reasonable license  
9 fee, what facts did you take into consideration?

10 A Well, I looked at the amount that was paid or the  
11 amount that was given up by Fleming in relationship --  
12 as it relates to the use of the software. And we  
13 looked at the period of time that would be covered for  
14 the use of this software for that fee and the estimated  
15 number of containers processed at that time.

16 Q Any other facts that you considered in coming to  
17 your opinion of a reasonable license fee?

18 A Well, the fact that the -- I guess that Mr. Berry  
19 had the copyright and just the general information.

20 Q Have you ever testified in a copyright case  
21 before?

22 A Not in a copyright case.

23 Q Have you ever provided an opinion in a copyright  
24 case?

25 A Not in a copyright case, no.

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- 1 Q Have you ever done any work on any intellectual  
2 property case at all?
- 3 A Yes, I have.
- 4 Q What cases?
- 5 A Let's see. I've done one for -- in fact, two of  
6 them for the same company, Hilo Fish.
- 7 Q Any others?
- 8 A I can't recall right now. I don't know.
- 9 Q You can't recall any intellectual property matter  
10 that you've worked for other than two of them for Hilo  
11 Fish?
- 12 A Yes. As it relates to damages, I guess.
- 13 Q Okay. Can you recall any intellectual property  
14 matter that you've worked on, regardless of whether it  
15 relates to damages, other than the two that you did for  
16 Hilo Fish?
- 17 A No, I can't recall right now.
- 18 Q And what was the issue in the two Hilo Fish  
19 matters?
- 20 A Patent infringement.
- 21 Q Who was the defendant in those cases?
- 22 A Hilo Fish was the defendant.
- 23 Q Who was the plaintiff?
- 24 A I don't remember his name. I don't remember his  
25 name.

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1 value of -- or the reasonable license fee assume that

2 Mr. Berry's license terminated at some time?

3 A I don't believe so.

4 Q Okay. So explain to me the significance of the --

5 of your testimony that Fleming had targeted January of

6 2000 to use new software?

7 A The significance of that?

8 Q Yes.

9 A Because when you convert into new software, then  
10 you would get off of your old.

11 Q Right.

12 A Right. And so wouldn't that be the end --

13 Q Why --

14 A I'm sorry, but I'm not -- again I think I'm not  
15 communicating properly. Because when they convert,  
16 they will be getting off of it, okay.

17 Q Okay.

18 A And that was -- and they're doing this conversion

19 and that's why I said also that they knew that

20 Mr. Berry's software was copyrighted, right, so

21 obviously when you're in a situation like that, you

22 know, you don't want to -- if they can get off of it

23 and put into something else, you're much better off.

24 Okay. And I think that's what they -- that's what I

25 entered as why they would try to get off of it.

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1 Q Okay --

2 A Because they had a system that they were  
3 converting into, okay, apparently was something that  
4 they -- and I'm just assuming -- that Fleming felt was  
5 a good system, you know, that the system that they  
6 purchased, okay, that they were converting to, that  
7 they felt it was a good system. So I felt that it was  
8 probably capable, if they're saying, you know, to do  
9 what they wanted to do, to do the functions necessary,  
10 you know, for them -- for Fleming to do what it wanted  
11 to do.

12 Q What is the basis of your opinion that Fleming  
13 intended to stop using Berry's software in January of  
14 2000?

15 A My opinion simply is that it was based on the  
16 assumption I made that Fleming understood that it was  
17 copyrighted software, okay, and would want to get off  
18 of it as soon as they could.

19 Q Okay. Why does the fact that software is  
20 copyrighted mean that somebody would want to stop using  
21 it as soon as they could?

22 A Well, because, one thing, it's not yours, okay.  
23 And knowing that they are converting into another  
24 system, okay, and see, again, I use the term robust, I  
25 would assume that this new system is more robust than

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1 the system that they had in place at that time. Okay.

2 So why then would one operate a system -- I'm sorry,

3 you want to ask another question?

4 Q Well, you use Quickbooks at your office, right?

5 A I use that.

6 Q And you don't own the copyright to Quickbooks.

7 A That's correct.

8 Q Are you trying to get off of it as quick as you

9 can?

10 A Well, I look for the new versions of it all the

11 time because I want to update it. Or, or, or, okay, we

12 always go to new releases and we go to -- you know, new

13 releases of software other than Quickbooks and we do

14 evaluations of that because sometimes we'll find

15 systems that are more robust, right, and we want to

16 move into that --

17 Q But the fact that somebody else owns the copyright

18 to it doesn't mean that you want to move off of it,

19 does it?

20 A For me, in the case of my use of Quickbooks?

21 Q Yeah.

22 A No, it doesn't.

23 Q That's right. And that's true for anybody who

24 uses any commercially sold software, somebody else owns

25 the copyright to it but that doesn't mean they're

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1 trying to stop using it, does it?

2 A Okay, however -- let me just answer your question.

3 It may or may not.

4 Q Okay. So why are you assuming that because Berry  
5 owned the copyright to the software that's the subject  
6 of this case, that Fleming was trying to stop using it  
7 by January of 2000?

8 A I understand your question. Okay. So the point  
9 I'm making is that when you're converting into a new  
10 system, the new system is far more robust than your old  
11 system, right, so you would want to get off of your old  
12 system to move into your new. Now, that's what we  
13 normally do. And if you use the example of Quickbooks,  
14 say that I'm using a Quickbooks, say, I don't know, the  
15 last one we had was about say it's 2000, 2001, and you  
16 see a better program in Peachtree, right, I'm going to  
17 move all my functions that I had in Quickbooks and I  
18 may even add things, for example, payroll, and throw  
19 that into Peachtree. You know, that's how we do when  
20 we, you know, when we try to upgrade systems and we,  
21 you know, move -- and we convert into new systems. And  
22 I think that's typical, okay, of what people do when  
23 they get into new systems. You don't do less. Okay.  
24 You want to do -- you're actually targeting to do more  
25 and you want to have more efficiency and those things.



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1 Q Okay. Explain how you -- the period -- I take it  
2 the relevant period of time to your calculation of the  
3 reasonable license fee is October 1999 to January of  
4 2000; is that correct?

5 A I think so.

6 Q How does that period of time impact the license  
7 fee? What's the significance of it?

8 A How does the period of time --

9 Q Explain what that period of time has to do with  
10 calculations of the license fee.

11 A Okay. That period of time then, what we have done  
12 is computed the -- or estimated the amount of  
13 containers processed, okay, using the software during  
14 that period of time, okay. That was the significance  
15 of that period of time.

16 Q Okay. If Fleming had actually intended to use the  
17 software for a longer period of time, then that would  
18 be -- then that longer period would need to be inserted  
19 into your formula in order to determine the reasonable  
20 license fee.

21 A If Fleming had intended to use the software for a  
22 longer period of time for the consideration that it  
23 gave, okay, and that was the agreed upon, you know,  
24 with Mr. Berry, then that would certainly impact our  
25 calculation of the reasonable license fee.

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1 definitions which would mean that we would understand  
2 -- would talk to management to understand what the  
3 overall objectives of the systems were.

4 We then go and review the current systems that  
5 they have in place, working -- talking to all of the  
6 people who are using the system, finding out how  
7 they're using it, what features they like about the  
8 current system. We find out what things they are  
9 looking for in addition to what the current system is  
10 doing. We then document that into a requirements  
11 document.

12 We then go through and design the features. We  
13 also pick up information about volumes that are being  
14 processed by the systems. We look at frequencies that  
15 is it's processed by the systems, like you may have  
16 peak frequencies at certain times when you have a large  
17 amount being processed through your system.

18 We look at how the system must interface with  
19 other systems so we understand all the other  
20 applications currently in place. We understand things  
21 that they do not want to include in the system for  
22 various reasons. Sometimes confidentiality.

23 Once we understand all of this, we then develop a  
24 requirements document which can be used then to specify  
25 what the system must do.

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1 Q Are you done?

2 A I am done about the requirement side. Do you want  
3 me to go further into systems design as to what we do  
4 in that --

5 Q No. Did you also write the software then? Did  
6 you code the software, too?

7 A Although I'm trained to code, I did not do  
8 specific coding itself. But what we did was we got  
9 involved in the system tests. So I would be involved  
10 in the tests of the specific module, the shrink tests.  
11 We do the unit testing, the shrink testing. Then we do  
12 the module testing. We also get involved in the  
13 overall system testing. We then do the evaluations  
14 related to that, working with the client to evaluate  
15 how the system is running.

16 Q Did you ever look at the software that's the  
17 subject of this case?

18 A I did not.

19 Q Given your tremendous knowledge of programming and  
20 of software, why didn't you look at it?

21 A One thing I don't think I have a tremendous  
22 knowledge of, you know, programming and I think you  
23 mischaracterize what I'm saying. You know, I think I  
24 understand what is involved in the systems development  
25 process, okay, design, maintenance of systems. But I

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1 did not look at the software itself.

2 Q Okay. I would like you to take a look at your

3 report, please. Could you turn to page six. It says

4 net sales and gross profits in the middle of the page,

5 right?

6 A Yes.

7 Q And it's a fact that you don't know what Fleming's

8 net sales were for any time after October of 1999,

9 right?

10 A After October of 1999? No, I don't think so.

11 Q And you don't know what Fleming's gross profits

12 were for any period after 1999.

13 A Gross profits? We did not have the financial

14 information that we requested and as a result, that

15 information was not provided to us.

16 Q And the same is true for CNS net sales and CNS

17 gross profits, you don't know what they were, do you?

18 A That information was not provided to us by you.

19 Q Okay. If as a matter of fact Fleming's books and

20 records show that Fleming lost money at all -- in

21 Hawaii at all relevant time periods, that would pretty

22 much moot any discussion of profit, right?

23 A Okay. If at any time Fleming lost money, you

24 know, they lost money, and so you're asking me does

25 Fleming have a profit. If Fleming lost money, Fleming

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1 A I did not do that.

2 Q Okay. Now, the profit analysis that you've done  
3 starting on page six of your report is based on sales  
4 of groceries; is that right?

5 A The profit analysis that I have done is not based  
6 on sales of groceries. What they are based on are the  
7 sales generated by Fleming in terms of what it has as  
8 sales and allowances.

9 Q Okay.. What did Fleming sell?

10 A Fleming -- I don't know all the things that it  
11 sold. Okay. I'm assuming that it is in groceries,  
12 primarily I would think that they're in more of the  
13 hard goods together with -- I don't think they're into  
14 the produce area.

15 Q And Fleming did not sell software, right?

16 A I don't know.

17 MR. HOGAN: Objection; assumes facts not in  
18 evidence.

19 A I really don't know whether Fleming sold software  
20 or not.

21 Q Fleming did not sell the software authored by  
22 Wayne Berry, correct?

23 A I don't know that.

24 Q Does your report include any component of profit  
25 resulting from the sale of software authored by Wayne

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1 Berry?

2 MR. HOGAN: Objection; vague as to the term sale.

3 A I don't think so.

4 Q Okay. Your report assumes that Fleming sold other  
5 products -- hard goods I think you called them.

6 A That's right.

7 Q And your report assumes that they made -- that  
8 17 percent of their sales were profits, correct?

9 A Seventeen percent of gross sales is equal to gross  
10 profits, correct.

11 Q And you did not do any analysis to determine the  
12 role, if any, that the software played in generating  
13 the profits that you calculated.

14 A I did.

15 Q What analysis did you do?

16 A Okay. I gained an understanding from Mr. Berry as  
17 to the role or the function that software was  
18 performing for the company.

19 Q What did Mr. Berry tell you the software did?

20 A That it is a logistics system or freight control  
21 system, I guess, and --

22 Q I want to withdraw that question.

23 What is the relationship that you determined the  
24 software has to the profits that you opined on  
25 beginning at page six of your report?

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1 A That the software has an integral function within  
2 the company's operations.

3 Q Okay. And is there any portion of the profit of  
4 the company that you opined on here that is not  
5 attributable to the software authored by Wayne Berry?

6 A I think all of the items that we've considered to  
7 be lost gross profits are attributable, okay, to what  
8 Mr. Berry's system can do.

9 Q So your opinion is that a hundred percent of the  
10 profit made from selling hard goods is attributable to  
11 the software that Wayne Berry created?

12 A Well, I can answer that yes and I can give you a  
13 reason for that.

14 Q Okay. Go ahead, what's the reason? I take it  
15 your answer is yes?

16 A Yes.

17 Q What's the reason?

18 A The reason is that Mr. Berry's system, the freight  
19 control system, is an integral part of the operations  
20 of the company, it's a necessary part for the company  
21 to operate with. As necessary as the company needs  
22 management, as the company needs, for example,  
23 financing. And without any one of these components,  
24 the company stops.

25 Q Okay.

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1 A Okay. And so this function was critical to the  
2 operations of the company. And I'm not saying that,  
3 you know, by itself, okay, it made all the profits by  
4 itself. But without it, you couldn't make any profits.  
5 Without management you can't make any profits. Without  
6 financing you can't make any profits. They're integral  
7 and essential components of the business. It's not  
8 something that you allocate things to. Each one, okay,  
9 is critical to the company's operations.

10 Q Did you make any effort to apportion the profit  
11 among the software and the other factors that you  
12 identified such as management and financing?

13 A I think I just did.

14 Q You just said -- I think you just said you didn't,  
15 didn't you?

16 A I said I did and that's why I said that a hundred  
17 percent of it, okay, can be attributable to Mr. Berry's  
18 software as much as I said that because it's such a  
19 critical function in the company. If you pull that  
20 out, there is -- the company doesn't operate. Okay.  
21 So that makes it critical.

22 So when you're saying that if, you know, can I  
23 attribute the gross profits to that software. If you  
24 pull the software out, there will be no gross profits.  
25 So that's why I attributed it, okay, to that function.



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1 I said similarly if you pull out management and you  
2 have the software in there, there would still be no  
3 gross profits.

4 Each one of these things are critical components.  
5 It's not allocable, you don't allocate among them. But  
6 that software is a critical element for the operations  
7 of the company.

8 Q Okay. Now, I want to make sure I understand --  
9 and I've written down your words, so let me make sure  
10 -- confirm with you first that I have them. It is your  
11 testimony that if you pull the software that Wayne  
12 Berry authored out, there would be no gross profit.

13 A That's what I would say.

14 Q Okay. I want to know every reason that you have  
15 determined that to be true, the first one of which I  
16 think I've already written down is your testimony that  
17 the software is an integral part for the company to  
18 operate.

19 A That's it.

20 Q Is there any other?

21 A No, that's my reason.

22 Q Okay. And what are the facts on which you based  
23 your opinion that the software is an integral part for  
24 the company to operate?

25 A Okay. The first thing is that the software is

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1 feature rich. Okay. And I guess the second thing is.

2 that Fleming won't give it up.

3 Q What is the basis for your statement that Fleming  
4 won't give it up?

5 A Because as I understand it, it's still being used.

6 Q Other than your understanding that the software  
7 authored by Wayne Berry is still being used, do you  
8 have any other reason or basis for your statement that  
9 Fleming won't give it up?

10 A No.

11 Q Okay. With all of your experience in the software  
12 industry, have you ever been called upon before to give  
13 an opinion on the amount of profit that resulted from  
14 the use of software?

15 A From the use of software? Amount of profits? I  
16 can't remember. I don't think I remember.

17 Q Was API profitable?

18 A I don't know. I just don't remember. I remember  
19 looking at some things, but I don't remember offhand  
20 whether they were profitable.

21 Q You know that they owed Fleming \$1.300 million.

22 A I know that there was a debt guaranteed for that  
23 \$1.295 million.

24 Q Right.

25 A Okay. There was also some payables that they had

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1 owed to Fleming.

2 Q Why is it that API had this valuable software and  
3 they couldn't make a profit?

4 MR. HOGAN: Objection; misstates testimony.

5 A I did not evaluate API as to, you know, it's  
6 operations and things like that, as to what, you know,  
7 would make them profitable and, you know, things like  
8 that. So I have not done that analysis.

9 VIDEOGRAPHER: Time is now 1:49, we're going off  
10 the record.

11 (Brief recess.)

12 VIDEOGRAPHER: The time is now 2:05 p.m. and we  
13 are back on the record.

14 BY MR. SMITH:

15 Q Mr. Ueno, the opinions that you've been giving  
16 relate to the time period October 1999 to present; is  
17 that right?

18 A That's correct. Well, it's October 1999 -- I'm  
19 giving my opinions as of today, I guess, as of the  
20 March 25th, 2005, right.

21 Q Okay. As of March of 2005.

22 A That was the date of our report was March 25th,  
23 2005.

24 Q Is there a difference between March of 2005 and  
25 today?

C E R T I F I C A T E

I, LYNANN NICELY, C.S.R., do hereby certify:

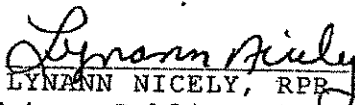
That I was acting as shorthand reporter in the foregoing matter on July 22, 2005;

That the witness, whose testimony is contained herein, prior to being examined and pursuant to stipulation was by me duly sworn or affirmed, that the proceedings were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-assisted transcription; that the foregoing represents, to my best ability, a true and accurate transcript of the proceedings had in the foregoing matter;

That, if applicable, the witness was notified through counsel, by mail; or by telephone to appear and sign; that if the deposition is not signed, either the reading and signing were waived by the witness and all parties, or the witness failed to appear and the original has been sealed unsigned;

That pursuant to HRCF 30(f)(1) the original will be forward to noticing counsel for retention.

I further certify that I am not attorney for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption. Dated on 07/22/2005.

  
LYNANN NICELY, RPR  
Notary Public, State of Hawaii  
My commission expires: 1/24/06